IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.08.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. MANIKUMAR

WRIT APPEAL NO.223 OF 2002

Uma .. Appellant

vs.

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Housing and Urban Development
   Department, Chennai 9.

2. The Special Tahsildhar
   Housing Scheme No.II (LA)
   Coimbatore 18. .. Respondents

Writ Appeal filed under Clause 15 of the Letters of Patent against the order of the learned Judge Mr.Justice K.Govindarajan dated 21.11.2001 made in W.P.No.7604 of 2000.

For appellants : Mr.R.Thiyagarajan, Sr.counsel
for Mr.R.N.Amarnath

For respondents: Mr.C.Thirumaran
Government Advocate

JUDGMENT

(Judgement of the Court was delivered by P.SATHASIVAM,J.)

The above writ appeal has been filed against the order of the learned single Judge dated 21.11.2001 made in W.P.No.7604 of 2000, in and by which the learned Judge dismissed the said writ petition on the ground that the writ petition came to be filed well after passing of the award on 25.04.2000.

2. Heard the learned senior counsel for the appellant as well as the learned Government Advocate for the respondents.

3. Mr.R.Thiyagarajan, learned senior counsel for the appellant after taking us through various details furnished in the affidavit filed in support of the above petition as well as the details culled

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out from the files produced by the learned Government Advocate, contended that notification under section 4(1) of the Land Acquisition Act issued by the respondents cannot be sustained, since the same was issued in the name of her grandfather Kichama Naidu, who was no more on the relevant date. According to the learned senior counsel for the appellant, notification was issued in the name of a dead person. It is also his claim that even on the date of 4(1) notification, the revenue records stood in the name of the writ petitioner/appellant and in such circumstances, the respondents should have issued 4(1) notification in the name of the petitioner/appellant and they also ought to have issued to the petitioner/appellant the notice for enquiry under Section 5-A of the Act. He also contended that on the basis of the statement made before the learned Judge by the learned Government Advocate that an award was passed on 05.11.1999 well before the filing of the writ petition, namely, 25.04.2000, the learned Judge dismissed the writ petition, however, the file produced by the learned Government Advocate shows that no award has been passed till date. According to him, the file discloses that a proposal for the award was sent to the authority concerned for approval and in the absence of passing of an award by the authority concerned, namely, Land Acquisition Officer, it cannot be claimed that award has been passed by the authority.

4. In so far as the first contention, learned Government Advocate fairly admits that on the relevant date of 4 (1) notification, the revenue records stood in the name of the petitioner/appellant as rightful owner of the land in question. However, the notification was issued in the name of her grandfather, who even according to the respondent was not alive. On this ground, the entire acquisition proceeding is therefore liable to be quashed.

5. Coming to the second contention, it is not in dispute that the statement made before the learned Judge, which is available in para 3 of the order of the learned Judge is factually incorrect. The file produced by the learned Government Advocate shows that no award has been passed by the Officer concerned till date. In such circumstances, the writ petition cannot be dismissed on the ground that the same came to be filed after passing of the award.

6. Though in the writ petition the petitioner has prayed for quashing of declaration under Section 6 of the Act, the appellant, during the pendency of this appeal has filed a miscellaneous petition for amendment of the prayer in the writ petition seeking for quashing of entire acquisition proceedings commencing from 4(1) notification. Though learned senior counsel for the appellant submitted that the said miscellaneous petition has been numbered, no such petition is before us. However, in view of the infirmity as we pointed out in the earlier part of this judgment, viz., the 4(1)

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notification was issued in the name of a dead person, though the revenue records stood in the name of the petitioner/appellant as rightful owner on the date of notification, we are inclined to quash the notification issued under Section 4(1) of the Act itself.

Under these circumstances, the order of the learned single Judge dated 21.11.2001 made in W.P.No.7604 of 2000 is set aside and the entire acquisition proceedings are quashed. Consequently, the writ appeal is allowed. No costs. It is made clear that if the respondents so desire, they are free to proceed afresh in accordance with law.

kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   State of Tamil Nadu
   Housing and Urban Development
   Department, Chennai 9.

2. The Special Tahsildhar
   Housing Scheme No.II
   Coimbatore 18.

+ one cc to Mr.N.Amarnath, Advocate Sr.No.36234.
+ one cc to Government Pleader, Sr.No.36216.

TR (CO)
RSM/19.8.2006

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